

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

76-7111

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

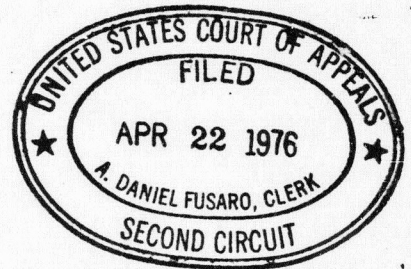
MARY SULLIVAN, individually and
on behalf of all others similarly
situated,

Plaintiff-Appellant,

-vs-

PHILIP SACCONI, individually and as
Chief Clerk of the City Court of
Rochester and LORRAINE PIETRANTONI,
individually and as Assistant Court
Clerk of the City Court of Rochester
and both as representatives of all
others similarly situated,

Defendants-Appellees.



ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

APPENDIX

K. WADE EATON, ESQ.
GREATER UP-STATE LAW PROJECT
80 West Main Street
Rochester, New York 14614
Tel: 716-454-6500
Attorney for Plaintiff-Appellant

PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

Jury demand date:

C. Form No. 106 Rev.

Civ-74-549

TITLE OF CASE

ATTORNEYS

MARY SULLIVAN, individually and on behalf
of all others similarly situated

v.

PHILIP SACCONI, individually and as Chief
Court Clerk of the City Court of Rochester
and LORRAINE PIETRANTONI, individually and
as Assistant Court Clerk of the City Court
of Rochester and both as representatives of
all others similarly situated; ~~AMERICAN
FINANCE CORPORATION; and BARRETT HESS-~~
(dismissed 3-4-75)

For plaintiff:

K. Wade Eaton
Greater Upstate Law Project
80 West Main Street
Rochester, N.Y. 14614
(454-6500)

For defendant:

Louis N. Kash, Esq., ~~formerly City of Rochester~~
Corporation Counsel of The City of R
46 City Hall
Rochester, New York 14614

~~Barrett Hess, Esq.
535 Powers Building
Rochester, New York 14614~~

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
S. 5 mailed	Clerk	11/29/74	#17398	12 ⁰⁰	
		12/5/74	Treas US C/D 27		15 ⁰⁰
S. 6 mailed	Marshal				
Basis of Action:	Docket fee				
Civil Rights Act -	Witness fees				
Class Action					
Action arose at:	Depositions				

Civ-74-549 Mary Sullivan, etc. v. Philip Saccone, etc., et al.

DATE 1974	PROCEEDINGS	Date Of Judgment
Nov. 27	Filed Complaint and orig. Summons (attys. to serve papers)	
29	" Order for appointment of person to serve process and to proceed in forma pauperis-Burke, DJ	F-15
27	JS 5 made	
Dec. 11	Filed affidavit of service of S&C on Philip A. Saccone & Lorraine Pietrantonio on 11-27-74	
11	Filed affidavit of service of S&C on Am. Finance Corp. & Sec. of State on 12-9-74	
19	Filed Defts. Philip Saccone & Lorraine Pietrantonio answer to complaint	
23	Filed stipulation & order extending time to answer & move against complaint for defts. Am. Finance Corp. & Barrett Hess until 1-30-75-Burke, DJ	F-15
1975		
Jan. 31	Filed Pltfs. request for admission of facts.	
Mar. 4	Filed stipulation & order dismissing the action with prejudice as against defts. Barret Hess & America Finance Corporation-Burke, DJ	F-162
Nov. 7	" Pltf's. affidavit & notice of motion for three-judge court-ret. at Roch. 11-24-75	
7	" Pltf's. statement of stipulated facts	
27	" Pltfs. affidavit of proof of admission of facts	
29	Defts. answering affidavit	
1976	Motion by Pltf. for 3-judge Ct. To be submitted one week from today	
Mar. 2	Filed Decision & Order denying pltfs. motion for a 3-judge court & for partial summary judgment etc.- The action is dismissed-Burke, DJ Notice & copies to K. Wade Eaton, Barrett Hess and Louis Kash	F-1
2	Filed judgment dismissing the action-Clerk Notice & copies to K. Wade Eaton, Barrett Hess and Louis Kash	F-174
2	JS 6 made	
11	Filed Pltf's. Notice of Appeal (copy mailed to Mr. Kash and to Clerk CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Eaton)	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, individually and
on behalf of all others similarly
situated,

Plaintiff,

-against-

PHILIP SACCONI, individually
and as Chief Court Clerk of the
City Court of Rochester and LORRAINE
PIETRANTONI, individually and as
Assistant Court Clerk of the City
Court of Rochester and both as
representatives of all others
similarly situated; AMERICAN
FINANCE CORPORATION; and BARRETT
HESS,

Defendants.

SUMMONS

Civ. No. 745-49

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned and required to serve upon

K. WADE EATON, ESQ.
Greater Up-State Law Project
Monroe County Legal Assistance Corp.

plaintiff's attorney, whose address is

80 West Main Street
Rochester, New York 14614
Tel. No. 716/454-6500

an answer to the complaint which is herewith served upon you,
within 20 days after service of this summons upon you, exclusive

of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN K. ADAMS

CLERK OF COURT

DEPUTY CLERK

DATE: Nov. 27, 1974

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, individually and
on behalf of all others similarly
situated,

Plaintiff,

-against-

PHILIP A. SACCONI, individually
and as Chief Court Clerk of the
City Court of Rochester and LORRAINE
PIETRANTONI, individually and as
Assistant Court Clerk of the City
of Rochester and both as represen-
tatives of all others similarly
situated; AMERICAN FINANCE
CORPORATION; and BARRETT HESS,

Defendants.

THREE-JUDGE COURT

COMPLAINT

Civ. No. 04-549

I.

PRELIMINARY STATEMENT

1. Plaintiff, individually and on behalf of all others similarly situated, brings this action pursuant to 42 U.S.C. §1983 to have New York State's default judgment statutes (New York Civil Practice Law and Rules §3215; New York Uniform City Court Act §1402; New York Uniform Justice Court Act §1402; New York Uniform District Court Act §1402; and New York City Civil Court Act §1402) declared unconstitutional and to have enforcement of these statutes permanently enjoined. She seeks

individual relief in the form of a money judgment against the individual creditor and attorney who have unlawfully violated her civil rights under federal and state statutes. The constitutional challenge is based on the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States of America, which is violated by certain parts of the default judgment statutes, both on their face and as applied.

2. The constitutional deficiency lies in the fact that the basic statute (New York Civil Practice Law and Rules §3215), which is incorporated by reference into the various uniform court acts, provides for the entry, by a court clerk, of a default judgment in a civil action without the requirement that the plaintiff in such an action file with the court a verified pleading, or other proof by affidavit, which states facts which are sufficient, as a matter of law, to state a claim for which relief may be granted. In addition, the statute is constitutionally deficient in that default judgments may be entered without any judicial finding that the facts alleged in the plaintiff's papers state a claim upon which the relief sought may be granted.

II.

JURISDICTION

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§1343(3) and (4) which provide for original jurisdiction of this

Court in all suits authorized by 42 U.S.C. §1983 to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States.

III.

THREE-JUDGE COURT

4. This action requires that a three-judge court be convened pursuant to 28 U.S.C. §§2281 et seq. inasmuch as the plaintiff seeks a permanent injunction restraining the enforcement, operation and execution of several state statutes, to wit: New York Civil Practice Law and Rules §3215; New York Uniform City Court Act §1402; New York Uniform Justice Court Act §1402; New York Uniform District Court Act §1402; and New York City Civil Court Act §1402; by restraining the actions of clerks of all civil courts from the enforcement and execution of those statutes, on the ground that said statutes are of state-wide applicability and are both on their face and as presently applied by the defendant court clerks, contrary to the Constitution of the United States of America.

IV.

CLASS ALLEGATIONS

5. Plaintiff brings this action individually and,

pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of all persons who have had, or may in the future have, default judgments taken against them without the filing of a verified complaint, or proof by affidavit, setting forth facts which state a claim upon which relief may be granted and without judicial review of whether the facts alleged constitute, as a matter of law, a claim upon which the relief sought may be granted.

6. The members of the plaintiff class are so numerous that joinder of all members is impracticable and, upon information and belief, their number increases by several thousand persons annually. Plaintiff, who is represented by counsel, seeks for the class only the enforcement of their right not to be deprived of liberty and property in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and will fairly and adequately represent the interests of the class in that endeavor. The questions of law presented in this action are common to all members of the class and the claims of the plaintiff are typical of those of all members of the class, inasmuch as they are based on a fundamental civil right guaranteed by the United States Constitution.

7. Defendants Saccone and Pietrantonio are sued individually in their official capacities as Chief Clerk and Assistant Clerk of the City Court of Rochester, respectively,

and as . . . representatives of all clerks of all courts of the State of New York which are empowered by the statutes here under consideration to enter default judgments without the filing of a verified complaint or proof by affidavit setting forth facts which state a claim upon which relief might be granted and without a judicial finding that facts have been alleged which state a claim upon which the relief sought may be granted.

8. The defendant class is comprised of the clerks of the sixty-two (62) counties who act as Clerks of the Supreme Courts and County Courts, clerks of the various city and district courts, the Clerk of the Civil Court of the City of New York and the clerks of New York's justice courts. Their number is so numerous to make joinder of each impracticable.

9. The defenses of Defendants Saccone and Pietrantonio will, upon information and belief, be typical of the defenses of all other members of the class. Defendants Saccone and Pietrantonio will be represented by counsel appointed by the appropriate governmental authority and the State of New York will presumably participate in the defense through its Attorney General. They will, therefore, fairly and adequately represent and protect the interests of the defendant class. The questions of law presented are common to all members of the defendant class.

V.

PLAINTIFF

10. Plaintiff Mary Sullivan is a citizen of the United States of America and the State of New York. She presently resides at 117 Luther Circle in the City of Rochester, New York.

VI.

DEFENDANTS

11. Defendant Philip A. Saccone is, upon information and belief, a citizen of the United States of America and the State of New York and presently resides in the City of Rochester, New York. He is employed by the City of Rochester as Chief Court Clerk of the City Court of Rochester.

12. Defendant Lorraine Pietrantonio is, upon information and belief, a citizen of the United States of America and the State of New York and presently resides in the County of Monroe. She is employed by the City of Rochester as an Assistant Court Clerk of the City Court of Rochester and is directly responsible to Defendant Saccone in the performance of her official duties.

13. Defendant American Finance Corporation is a domestic corporation with its principal office in the City of

Albany, New York, and maintains an office at 826 North Clinton Avenue, Rochester, New York, for the purpose of transacting business pursuant to New York's small loan statute (New York Banking Law, Article IX).

14. Defendant Barrett Hess is, upon information and belief, a citizen of the United States and of the State of New York and presently resides in the City of Rochester, New York. He is, upon information and belief, an attorney admitted to practice in the State of New York and maintains a law office at 16 West Main Street, Rochester, New York. He represented Defendant American Finance Corporation in taking the default judgment in question against the plaintiff.

VII.

FACTUAL ALLEGATIONS

15. On or about June 26, 1973, plaintiff Sullivan entered into a loan agreement with defendant American Finance Corporation pursuant to which defendant American Finance Corporation loaned to plaintiff Sullivan the amount of \$533.45 to be repaid in 36 equal monthly installments of \$21.00 each, totalling \$756.00. The "note" and "loan statement" evidencing this agreement are attached hereto as Exhibits A and B respectively.

16. Plaintiff Sullivan made the \$21.00 payment due on July 26, 1973, but did not make the August payment on

August 26, 1973, the date on which payment was required by the contract.

17. Plaintiff Sullivan subsequently made the August payment, along with the default charges provided in the contract, and has made all subsequent payments as required by the contract, through September, 1974.

18. Upon information and belief, defendant American Finance Corporation executed its option to accelerate the entire amount due on the loan at some time subsequent to August 26, 1973, and referred the account to defendant Barrett Hess for collection.

19. Defendant Hess caused an action to be commenced in the City Court of Rochester by the service of a Summons, by substituted service, on the 29th day of September, 1973. A copy of the affidavit of David F. Probst, the individual who effected service, is attached hereto as Exhibit C.

20. The complaint which was served along with the Summons pursuant to section 902(a) of the Uniform City Court Act was endorsed upon the Summons and is attached hereto as Exhibit D.

21. Plaintiff Sullivan did not appear in that action because she never received actual notice of its pendency.

22. On November 5, 1973, a default judgment was entered in that action by defendant Pietrantonio, Assistant Clerk of the City Court of Rochester. A copy of said judgment is attached hereto as Exhibit E.

23. The judgment entered by defendant Pietrantonì was based on the Affidavit of Service (Exhibit C), the Summons (Exhibit D), the Endorsed Complaint (Exhibit E), the affirmation of defendant Hess as to the default which appears on the face of the judgment and the affidavit of defendant Hess as to the facts constituting the claim, the default and the amount due, a copy of which is attached hereto as Exhibit F.

24. The entry of the judgment by defendant Pietrantonì was an act authorized by CPLR sections 3215(a) and (e) which read as follows:

(a) Default and entry. When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him. If the plaintiff's claim is for a sum certain or for a sum which can by computation be made certain, application may be made to the clerk within one year after the default. The clerk, upon submission of the requisite proof, shall enter judgment for the amount demanded in the complaint or stated in the notice served pursuant to sub-division (b) of rule 305, plus costs and interest. Upon entering a judgment against less than all defendants, the clerk shall also enter an order severing the action as to them. When a plaintiff has failed to proceed to trial of an action reached and called for trial, or when the court orders a dismissal for any other neglect to proceed, the defendant may make application to the clerk within one year after the default and the clerk, upon submission of the requisite proof, shall enter judgment for costs.

Where the case is not one in which the clerk can enter judgment, the plaintiff shall apply to the court for judgment.

(e) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316, and proof by affidavit made by the party of the facts constituting the claim, the default and the amount due. Where a verified complaint has been served it may be used as the affidavit of the facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or his attorney. When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value.

25. The authority of defendant Pietrantonio to enter such a judgment was directly derived from her position as Assistant Clerk and in that position she was subject to the direct supervision of defendant Saccone as Chief Court Clerk of the City Court of Rochester.

26. The documents upon which the default judgment was entered did not include a verified complaint or proof by affidavit of facts sufficient, as a matter of law, to state a claim upon which relief might be granted.

27. Upon information and belief the judgment was entered without any judicial finding that facts had been alleged which state a claim for which the relief sought could be granted.

28. The amount sued for by defendant American Finance Corporation was \$735.00, which constituted the total sum of payments required pursuant to the contract to be made over the three-year term of the contract, less the \$21.00 payment made in July of 1973.

29. The judgment entered by defendant Pietrantonio was in the amount of \$800.00 which consisted of the \$735.00 sued for and \$65.00 of statutory costs and actual disbursements.

30. The entry by defendant Pietrantonio of a judgment based on the full amount sued for, i.e. \$735.00, was in violation of §352(d)(1) of the New York State Banking Law which requires that a proportional rebate of unaccrued interest must be deducted from the amount due and owing if judgment is taken prior to the maturity date of the note.

31. This violation of the Banking Law would have been apparent to a reviewing judicial official from the face of the contract and would have been apparent to a judicial official reviewing any pleading or affidavit which set forth facts sufficient to state a claim upon which the relief sought could have been granted.

32. Subsequent to the entry of the judgement on November 5, 1973, American Finance Corporation, through its agent defendant Hess, employed state income execution proceedings resulting in payments to defendant American Finance

Corporation by plaintiff Sullivan's employer in the amount of \$189.64.

33. Upon information and belief the Rochester Credit Bureau, a local credit reporting agency, has maintained and continues to maintain as part of their credit history on plaintiff Sullivan the judgment entered against her by defendants Pietrantonì and Saccone in favor of defendant American Finance Corporation which was procured by the acts of defendant Hess as set forth above.

34. Upon information and belief the procedures and practice followed by defendants Saccone and Pietrantonì are typical of the practice of all members of the defendant class in the entering of default judgments against members of the plaintiff class.

VIII.

FIRST CAUSE OF ACTION

35. Plaintiff restates, realleges, and incorporates each and every allegation in paragraphs 1 through 34.

36. The Fourteenth Amendment to the Constitution of the United States provides that no state shall deprive any person of life, liberty, or property, without due process of law.

37. Defendants Saccone, Pietrantonì and Hess and members of the defendant class have deprived plaintiff Sullivan

and the plaintiff class of liberty and property without affording them due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

IX

SECOND CAUSE OF ACTION

38. Plaintiff restates, realleges, and incorporates each and every allegation of paragraphs 1 through 37.

39. Defendants Saccone, Pietrantonio, Hess and members of the defendant class have subjected plaintiff Sullivan and members of the plaintiff class, under the color of state law, to a deprivation of their rights as guaranteed by the Fourteenth Amendment to the United States Constitution, in violation of Title 42 United States Code §1983.

X

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays, on behalf of herself and all others similarly situated, that this Honorable Court:

1. Assume jurisdiction of this cause and convene a three-judge district court pursuant to 28 U.S.C. §§2281 and 2284 to determine this controversy.

2. Determine by Order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be prosecuted and defended as a class action.

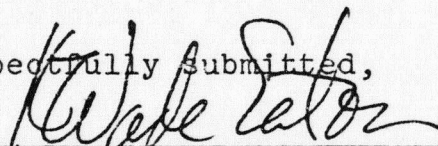
3. Enter a final judgment enjoining the defendant class from enforcing §3215 of the New York Civil Practice Law and Rules, New York Uniform City Court Act §1402, New York Uniform Justice Court Act §1402, New York Uniform District Court Act §1402, and New York City Civil Court Act §1402, pursuant to Rule 65.

4. Enter a final judgment in favor of plaintiff Sullivan against defendants Saccone, Pietrantonio and Hess, jointly and severally in the amounts of \$1,000.00 as compensatory damages and \$3,000.00 as punitive damages.

5. Enter a final judgment pursuant to 28 U.S.C. 2201 declaring the presently outstanding judgment held by defendant American Finance Corporation, null and void and enter a judgment in favor of plaintiff Sullivan against defendant American Finance Corporation in the amount of \$189.64.

6. Pursuant to Rule 54(d) allow plaintiff Sullivan her costs herein, along with reasonable attorneys' fees, and also grant her and all persons similarly situated such additional or alternative relief as may seem to this Court to be just, proper and equitable.

Respectfully Submitted,


K. WADE EATON, ESQ.
Attorney for Plaintiff
Greater Upstate Law Project
80 West Main Street
Rochester, New York 14614
Tel.: 716-454-6500

LENDER IS COMPANY INDICATED BELOW

AGREED RATE OF INTEREST

2 1/2% per month on that part of the unpaid principal balance not exceeding \$100; 2% per month on that part of the unpaid principal balance exceeding \$100 but not exceeding \$300; 1 1/2% per month on that part of the unpaid principal balance exceeding \$300 but not exceeding \$900; 1 1/4% per month on any part of the unpaid principal balance exceeding \$900 but not exceeding \$1400.

ACCOUNT NUMBER TYPE

5799693

BORROWERS (NAMES AND ADDRESS)

SULLIVAN, MARY J.
117 SUTHER CIRCLE
ROCHESTER, NY, 14611

RESIDENCE ADDRESS
(IF NOT SAME)

DATE OF THIS NOTE	FIRST INSTALLMENT DUE DATE	OTHERS SAME DAY OF EACH MONTH	FINAL INSTALLMENT DUE DATE	FIRST PAYMENT \$	REGULAR PMT \$	AMT. OF NOTE PAYABLE IN
05/26/73	07/26/73		05/26/75	21.00	21.00	36 MONTHLY INSTALLMENTS

\$ 755.00 AMOUNT OF NOTE
\$ 222.55 PRECOMPUTED INTEREST
\$ 532.45 PRINCIPAL AMT. OF LOAN

UNIT CHARGE

FOR VALUE RECEIVED, the undersigned jointly and severally promise to pay to the order of the Payee above named, at its office, the amount of the note shown hereon, in consecutive monthly installments as above indicated.

The amount of note includes principal amount of loan and precomputed interest as shown above, such interest computed at the agreed monthly rate on scheduled unpaid monthly balances. Payments may be applied to the combined principal amount of loan and precomputed interest.

Payment in advance may be made in any amount. In the event of prepayment of the loan in full, the undersigned shall receive or be credited a refund of precomputed interest as prescribed by Section 352(d) of Article IX of the New York Banking Law (the New York Small Loan Law). In the event three or more, but not all, installments are prepaid in full at any one time, the Borrower shall receive a rebate of the precomputed interest equal to the difference between the Precomputed Interest and interest recomputed at the above agreed monthly rate on the unpaid principal balances by applying each payment made first to interest and then to principal. Additionally, if interest is recomputed as a result of the prepayment of three installments, the unpaid balance of the Principal Amount of Loan shall bear interest thereafter at the above Agreed Rate of Interest.

If this Note is not paid at the Final Due Date or any deferred Final Due Date, or if the maturity of this contract is accelerated for any reason, the unpaid balance of the Principal Amount of Loan shall bear interest thereafter at the above Agreed Rate of Interest.

In the event of default of more than five (5) days in the payment of more than one-half of any scheduled installment, the licensee may charge and collect a default charge as provided by Section 352(d) of Article IX of the New York Banking Law. In the event all unpaid installments on which no default charge has been collected are deferred one (1) or more full months, the Lender may charge and collect a deferment charge as provided by said law.

In the event of default in payment of the full amount of any installment the holder of this note, at its option and without notice or demand, may declare the entire amount due thereon at once due and payable, and such default may be waived without losing at any time the option to accelerate maturity upon any subsequent default.

The makers, sureties, endorsers and guarantors, severally waive demand for payment, notice of nonpayment, protest and notice of protest of this note and consent to extension of time of payment without notice. The undersigned hereby acknowledges receipt of a statement of said loan as required by the law. The construction, validity and effect hereof shall be governed by the laws of New York.

The undersigned hereby jointly and severally authorize the Lender, its agents and assigns to communicate in any manner with any person, firm, corporation or governmental agency for any purpose in connection with the making or collection of the loan evidenced by this Note and also waive the right to enforce any cause, action or causes of action which the undersigned may hereafter have for violating his right of privacy by reasons of such communications, unless such authorization and/or waiver is prohibited by applicable State law or regulation.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.

Lender Named Above

Debtor: (Seal)

By: Authorized Agent/Witness

Debtor: (Seal)

By: N.Y. 20134 (3/72) 5 - Witness
NOTE - CUSTOMER'S COPY

Debtor: (Seal)

19
EXHIBIT A

LOAN STATEMENT

YOUR ACCOUNT IS PAYABLE IN THE OFFICE OF THE LENDER INDICATED BELOW

222 N. CORTLAND ST. ROCHSTER, N.Y. 14602
 PHONE 442-4740

ACCOUNT NUMBER TYPE

5799698

BORROWERS (NAMES AND ADDRESS)

SULLIVAN, MRS. MARY J.

RESIDENCE ADDRESS
(IF NOT SAME)

117 SUTHER CIRCLE

ROCHESTER, NY 14611

DATE OF LOAN AND
THIS STATEMENT

FIRST INSTALLMENT
DUE DATE

OTHERS
SAME DAY
OF EACH
MONTH

FINAL INSTALMENT
DUE DATE

FIRST
PAYMENT

REGULAR PMT

TOTAL PAYABLE IN

06/26/73

07/26/73

06/26/76

21.00

21.00

36

\$ 756.00

TOTAL OF PAYMENTS

\$ 222.55

FINANCE CHARGE

\$ 533.45

AMOUNT FINANCED

\$ 17.99

DISABILITY PREMIUM

\$ 10.43

LIFE PREMIUM

\$ 2.00

FILING FEE

\$ NONE

LICENSE, TITLE, REGISTRATION FEES

2 \$

NET ON PRIOR ACCOUNT

\$.33

UNIT CHARGE

24.25

% ANNUAL PERCENTAGE RATE

DEFAULT CHARGE: In the event of default of more than five (5) day the payment of more than one-half of any scheduled installment, the Lender may charge and collect a default charge not exceeding an amount equal to refund that would be required for prepayment in full one month prior to final due date (Unit Charge, below).

REBATE FOR PREPAYMENT IN FULL: For prepayment in full of unpaid balance hereof prior to maturity, the Borrower shall receive a refund credit of the original interest charge excluding any adjustment of interest for first period of more or less than one month, in that proportion which the sum of the monthly balances scheduled to follow the installment date nearest date of prepayment bears to the sum of the monthly balances originally scheduled under the loan contract (Rule of 78, as provided in the New York Small Loan Law); prepayment made prior to the 16th day following any due date shall be deemed to have been made on such due date. A special refund made for prepayment during the first month. In the event of prepayment full of 3 or more installments, a Finance Charge rebate in the amount of the difference between the Finance Charge and charges recomputed at the Agreed Rate of Interest on the unpaid principal balances by applying each payment made first to interest and then to principal shall be made. See Section 352 of the New York Small Loan Law, a copy of which is set out on the reverse side hereof.

INSURANCE OPTION

ACCIDENT AND HEALTH
INSURANCE COST

17.99

CREDIT LIFE INSURANCE
COST

10.43

DECREASING TERM CREDIT LIFE INSURANCE AND CREDIT DISABILITY INSURANCE are offered on this loan. Such coverage is NOT required by the creditor in order to obtain the loan. The cost of each type of insurance is set forth above. Please indicate your choice of coverage by checking the appropriate statement(s) and signing below:

- ☒ I want Credit Life Insurance.
- ☒ I want Credit Disability Insurance.
- ☐ I do NOT want Credit Life or Credit Disability Insurance.

Sign Here

Borrower

Date

6.26.73

PAID BY CHECK TO OR FOR BORROWER

1.		\$
2.		\$
3.		\$
4.		\$
5.		\$
6.		\$
7.		\$
8.		\$
9.		\$
10.		\$
11.		\$
12.		\$

NET CHECK TO BORROWER
LINE 1 LESS LINES 2 THRU 12

\$503.03

CLOSED
BY

NATURE OF SECURITY FOR THIS LOAN

A. Security Agreement: (Check one)

☐ No Security Agreement

☒ Security Agreement On Household Goods

The security agreement, if any, secures future and other indebtedness and covers after-acquired property other than consumer goods.

B. Other Security: Insurance as indicated above:

None

Co-Maker

One

Wage Assignment

SEE ADDITIONAL INFORMATION SET OUT ON THE REVERSE SIDE HEREOF.

STATE OF NEW YORK
City COURT

COUNTY OF Monroe

American Finance Co.

against-

Mary J. Sullivan

Index No.
AFFIDAVIT
OF SERVICE

STATE OF NEW YORK, COUNTY OF MONROE, CITY OF ROCHESTER ss.:

David F. Probst being duly sworn, deposes and says that deponent is not a party to this action, is over 19 years of age and resides in Rochester NY.

That on the day of 19 at AM/PM (local time) at

Deponent served the annexed in this action on described as defendant therein named, by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

() A That deponent asked the defendant whether (s)he was in active military service of the United States, or of the State of New York in any capacity whatever, and (s)he answered in the negative. The defendant wore ordinary civilian clothing and no military uniform. Upon information and belief the defendant is not in the military service of the United States, or of the State of New York as that term is defined in either the Federal or State Soldier's and Sailor's Civil Relief Act. The source of deponent's information and the grounds of deponent's belief are the conversations and observations above narrated.

Deponent served the annexed on the defendant named therein, by delivering a true copy thereof to described as whom deponent knew to be the of said corporation; deponent knew the corporation so served to be the corporation mentioned and described in said papers as the defendant therein.

(X) Deponent served the within summons and complaint on defendant, Mary J. Sullivan on the 29 day of September 1973 at 9:30 PM (local time) at 117 Luther Street, Rochester, New York defendant's actual place of business - dwelling place - usual place of abode.

By delivering thereat, a true copy of each to Nicky Sullivan, daughter described as negro/female, 18 years, 5'8", 150 lbs., a person of suitable age and discretion.

By affixing a true copy of each to the door thereof, deponent was unable, with due diligence to find defendant or a person of suitable age and discretion thereat, having called there on

19 at AM/PM; on 19 at AM/PM
19 at AM/PM; on 19 at AM/PM

Deponent also enclosed a true copy of same in a postpaid sealed wrapper properly addressed to said defendant at defendant's last known residence, 117 Luther Circle, Rochester, New York and deposited said wrapper in - a post office - official depository under the exclusive care and custody of the United States Post Office Department with the State of New York.

Sworn to before me, this
29 day of September 1973

David F. Probst
David F. Probst

KATHLEEN G. CLARK
Commissioner of Courts, City of Rochester
My Commission Expires 1-27-74

Kathleen G. Clark

21
EXHIBIT C

State of New York, County of

ss.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on 19 at No.

deponent served the within summons and complaint on

check applicable box () and fill in form

☐ PERSONAL SERVICE ON INDIVIDUAL

defendant therein named, by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

☐ PERSONAL SERVICE ON CORPORATION

corporation, a defendant therein named, by delivering a true copy of each to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be thereof.

Index No.

City Court of the City of Rochester, N.Y.
County of MONROE

AMERICAN FINANCE CORPORATION

Plaintiff

against

MARY SULLIVAN

Defendant

Summons

INDORSED COMPLAINT

A statement of the nature and substance of the plaintiff's cause of action is as follows:

BREACH OF CONTRACT FOR MONIES
LOANED.

BARRETT HESS ESQ.
Attorney(s) for Plaintiff

Post Office Address and Telephone Number

535 Powers Building
Rochester, New York

22

EXHIBIT D

BEST COPY AVAILABLE

CITY COURT OF THE CITY OF Rochester, New York
ADDRESS:
COUNTY OF MONROE

AMERICAN FINANCE CORPORATION
826 NORTH GOODMAN STREET
ROCHESTER, NEW YORK

against

MARY J. SULLIVAN
117 Luther Street
Rochester, New York 14611

Plaintiff

Defendant

Index No.

Summons

Plaintiff's Residence
Address:

826 North Goodman
Rochester, N.Y.

Basis of Jurisdiction

Residence of Parties

To the above named defendant(s)

You are hereby summoned to appear in the City Court of the City of Rochester, New York
State of New York, in the office of the clerk at Hall of Justice, City of Rochester, New York
within ten days after service of this summons upon you, exclusive of the day of service, and to make answer
to the complaint; upon your failure to answer, judgment will be taken against you for the sum of \$ 735.00
with interest thereon from the 26th day of August 1973 together with the costs of this action.
Dated: the 25th day of September 1973

BARRETT HESS ESQ.
Attorney(s) for Plaintiff

Post Office Address and Telephone Number

535 Powers Building
Rochester, New York
546/4225

A statement of nature and substance of plaintiff's cause of action appears on the reverse side hereof.

CITY COURT OF THE CITY OF ROCHESTER, NEW YORK

AMERICAN FINANCE CORPORATION

against

Plaintiff

Defendant

MARY SULLIVAN

AFFIDAVIT OF FACTS
CONSTITUTING THE CLAIM,
THE DEFAULT AND THE
AMOUNT DUE

STATE OF NEW YORK, COUNTY OF

ss.:

BARRETT HESS ESQ.

being duly sworn, deposes and says: that deponent is

plaintiff in the within action; this action was commenced by substituted service
of the summons and complaint upon defendant and is an action for breach of contract for
monies ~~xxx~~ loaned.

Wherefore your deponent demands judgment against the defendant

in the sum of \$ 735.00 with interest from the 25th day of September 19 73 together with
the costs and disbursements of this action.

Sworn to before me
this 2nd day of November 19 73

Robert A. Shapiro

ROBERT A. SHAPIRO

JUDICIAL PUBLIC, State of N. Y., Monroe County

Notary Public, expires March 30, 1975
May be necessary

Barrett Hess
BARRETT HESS
The name signed must be printed beneath

Index No.

City Court of the City of

American Finance Corporation

Plaintiff

against

Mary Sullivan

Defendant

Judgment on Default

Attorney(s) for Plaintiff
Office and Post Office Address

Barrett Hess, Esq.
535 Powers Bldg.
Rochester, N. Y.

Amount and Interest \$ 735.00
Costs and Disbursements 65.00

\$ 800.00

Filed

NOV 2 1973

CITY CLERK
CITY OF ROCHESTER
NEW YORK

Sir:

Please take notice that the within is a true
copy of a judgment made and entered in the
within entitled action and duly filed in the
office of the Clerk of the within named court
on 19

Dated,

Yours, etc.,

Attorney(s) for Plaintiff
Office and Post Office Address

To:

25
EXHIBIT F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, Individually and
on behalf of all others similarly
situated,

ANSWER

Plaintiff

-v-

PHILIP SACCONI, Individually
and as Chief Court Clerk of the
City Court of Rochester and LORRAINE
PIETRANTONI, Individually and as
Assistant Court Clerk of the City
Court of Rochester and both as
representatives of all others
similarly situated; AMERICAN
FINANCE CORPORATION: and BARRETT
HESS,

Defendants.

Defendants Philip Saccone and Lorraine Pietrantoni, for their
answer to the complaint respectfully allege:

FIRST DEFENSE

1. These defendants are immune from liability imposed by
42 U.S.C. §1983 and therefore this Court lacks jurisdiction over
the defendants Saccone and Pietrantoni.

SECOND DEFENSE

2. As to the allegations contained in paragraph "4" of the
complaint, deny that the convocation of a three-judge court is
necessary because this action does not meet the requirements of
those sections governing three-judge courts.

THIRD DEFENSE

3. As to the allegations contained in paragraphs "5", "6", "7", "8", "9" admit that defendant Saccone is the Chief Clerk of the Civil Branch of the City Court of Rochester and that defendant Pietrantonì is a Clerk-Typist in the above-mentioned clerk's office; denies all other allegations that plaintiff or these defendants are representative of any appropriate class and further denies that this action may be pursued as a class action.

FOURTH DEFENSE

4. Admit the allegations contained in paragraphs "3", "11", "22", "23", "24", "29".

5. As to the allegations in paragraph "12" of the complaint, admit all allegations therein except to state that defendant Pietrantonì has the title of Clerk-Typist.

6. They are without knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "10", "13", "14", "15", "16", "17", "18", "19", "20", "21", "25", "26", "27", "28", "32", "33", "34".

7. Deny the allegations contained in paragraphs "1", "2", "30", "31", "35", "36", "37", "38", "39" and any other allegation not specifically admitted, controverted or denied.

FIFTH DEFENSE

8. In doing the acts complained of in the complaint, defendants were authorized by and acted under the authority of the New York Civil Practice Law and Rules §3215.

SIXTH DEFENSE

9. The summons and complaint herein were served upon the defendants Saccone and Pietrantonio by K. Wade Eaton, Esq., attorney for plaintiff herein. Therefore, service of process does not comply with the provisions of Rule 4 FRCP and this action should be dismissed for insufficiency of process.

WHEREFORE, defendants Saccone and Pietrantonio demand judgment dismissing the complaint herein together with costs and disbursements of this action.

DATED: ROCHESTER, NEW YORK
December 17, 1974

Yours, etc.

LOUIS N. KASH
Corporation Counsel of
The City of Rochester
and Attorney for Defendants
Saccone and Pietrantonio
Office & P.O. Address:
46 City Hall
Rochester, New York, 14614

By: James T. Townsend
JAMES T. TOWNSEND
Municipal Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, individually
and on behalf of all others
similarly situated,

Plaintiff,

-v-

PHILIP SACCONE, et al.,

Defendants.

REQUEST FOR ADMISSION
OF FACTS

Civ. No. 74-549

TO: LOUIS N. KASH, ESQ.
Attorney for Defendants Saccone
and Pietrantonì
46 City Hall
Rochester, New York 14614

Plaintiff Mary Sullivan requests defendants Saccone and Pietrantonì, within 30 days after service of this request, to admit, for purposes of this action only, the truth of the following facts:

1. Defendant Lorraine Pietrantonì is one of the persons authorized to enter default judgments pursuant to New York Civil Practice Law and Rules §3215 (a) and she entered the judgment referred to in paragraph 22 of the complaint herein pursuant to that authority.

2. The judgment referred to in paragraph 22 of the complaint herein was entered by defendant Lorraine Pietrantonio without any judicial review or any judicial finding that facts had been alleged which state a claim for which the relief sought could be granted.

Dated: January 28, 1975

K. WADE EATON, ESQ.
Attorney for Plaintiff
Greater Up-state Law Project
80 West Main Street
Rochester, New York
Tel: 716-454-6500

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN,

Plaintiff,

-v-

PHILIP SACCONI, et al.,

Defendants.

Civil No. 74-549

AFFIDAVIT of PROOF

of ADMISSION of

FACTS

STATE OF NEW YORK)
COUNTY OF MONROE)

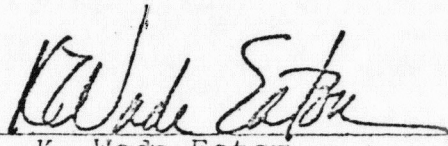
K. WADE EATON, being duly sworn, deposes and says:

1. I am the attorney for the plaintiff herein.

2. On January 29, 1975, pursuant to my direction, a request for admission of facts pursuant to Rule 36 of the Federal Rules of Civil Procedure was served upon Louis N. Kash, Esq., attorney for defendants Philip Saccone and Lorraine Pietrantonio. On January 29, 1975, a copy of said request for admission was filed with the Clerk of this Court, together with proof of service thereof. A copy of said request is attached hereto, marked Exhibit 1.

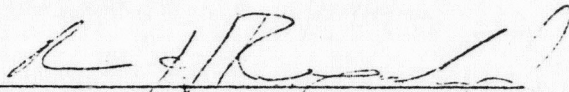
3. No denial, admission or other answer to said request has been served upon the undersigned or upon any other person authorized to receive such answers on behalf of plaintiff by Louis N. Kash, Esq., or any other person. More than thirty days have elapsed since the service of said request for admission

of facts pursuant to Rule 36.


K. Wade Eaton

Sworn to before me this

4th day of March, 1975



RENE H. REZAC
NOTARY PUBLIC, State of Florida
No. 8842715
Qualified in Monroe County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, individually
and on behalf of all others
similarly situated,

Plaintiff,

-v-

PHILIP SACCONI, et al.,

Defendants.

REQUEST FOR ADMISSION
OF FACTS

Civ. No. 74-549

TO: LOUIS N. KASH, ESQ.
Attorney for Defendants Saccone
and Pietrantonio
46 City Hall
Rochester, New York 14614

Plaintiff Mary Sullivan requests defendants Saccone and Pietrantonio, within 30 days after service of this request, to admit, for purposes of this action only, the truth of the following facts:

1. Defendant Lorraine Pietrantonio is one of the persons authorized to enter default judgments pursuant to New York Civil Practice Law and Rules §3215 (a) and she entered the judgment referred to in paragraph 22 of the complaint herein pursuant to that authority.

2. The judgment referred to in paragraph 22 of the complaint herein was entered by defendant Lorraine Pietrantoni without any judicial review or any judicial finding that facts had been alleged which state a claim for which the relief sought could be granted.

Dated: January 28, 1975

K. WADE EATON, ESQ.
Attorney for Plaintiff
Greater Up-state Law Project
80 West Main Street
Rochester, New York
Tel: 716-454-6500

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN,

Plaintiff,

-vs-

PHILIP SACCONI, et ano.,

Defendants.

STATEMENT OF
STIPULATED FACTS

Civ. No. 74-549

IT IS HEREBY STIPULATED by and between K. Wade Eaton, Esq., attorney for the plaintiff and Louis N. Kash, Corporation Counsel of the City of Rochester and attorney for defendants Saccone and Pietrantonio, Joseph A. Regan, of counsel, that there exists no dispute between the respective parties as to the existence of the following facts:

1. On or about June 26, 1973, Mary Sullivan entered into a loan agreement with American Finance Corporation which provided for credits and disbursements to her totalling \$533.45 and in which agreement she agreed to make thirty-six monthly payments of \$21.00 each, totalling \$756.00.

2. Mary Sullivan made the first required payment of \$21.00 on or about July 26, 1973, leaving a total balance due on the contract of \$735.00.

3. Mary Sullivan did not make a timely payment of the second \$21.00 installment on August 26, 1973, and on September 29, 1973, American Finance Corporation instituted an action in the

City Court of Rochester, Rochester, New York, by the service of a summons and indorsed complaint, pursuant to the New York Uniform City Court Act, §902(a). A true copy of this document is attached as Exhibit "D" to the complaint herein.

4. Mary Sullivan did not appear in the City Court action and on November 5, 1973, an attorney for American Finance Corporation made application to defendant Pietrantonl for the entry of a default judgment based on the summons, the indorsed complaint and the affidavit of Barrett Hess, Esq., a true copy of which is attached, as Exhibit "F", to the complaint herein.

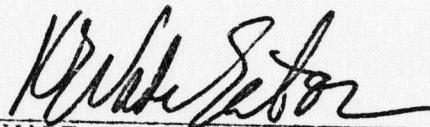
5. On November 5, 1973, judgment was entered against plaintiff Sullivan in the amount of \$800.00, which amount was comprised of the \$735.00 sued for on the loan agreement and \$65.00 in costs, in favor of American Finance Corporation.

6. The judgment referred to above was entered without the review of the papers upon which it was based by a Judge of the City Court of Rochester, as authorized by New York Civil Practice Law and Rules §3215(a), and without any determination as to whether facts had been alleged in the papers of American Finance Corporation which stated a claim for which the relief sought could be granted.

7. Pursuant to New York State Banking Law §352(d)(1) the maximum amount, exclusive of costs, for which a judgment could legally have been given on November 5, 1973, was \$579.55.

8. The procedures followed and actions taken by defendant Pietrantonl in effecting the entry of the default judgment against plaintiff Sullivan, insofar as they did not involve the review of the papers upon which the default judgment was based by a Judge of the City Court of Rochester or any determination as to whether facts had been alleged in the papers of American Finance Corporation which stated a claim for which the relief sought could be granted, are those generally prescribed and followed in the City Court of Rochester and are authorized by the New York Civil Practice Law and Rules §3215 (a).

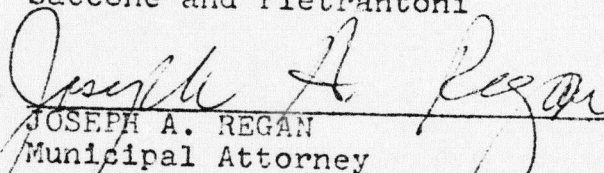
Dated: June 19, 1975



K. WADE EATON, ESQ.
Attorney for Plaintiff

LOUIS N. KASH
Corporation Counsel of the City of
Rochester and Attorney for
Defendants
Saccone and Pietrantonl

By:

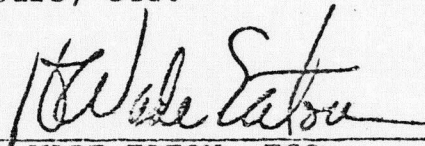


JOSEPH A. REGAN
Municipal Attorney

class declaring §3215 of the New York Civil Practice Law and Rules to unconstitutional and permanently enjoining the enforcement of said statute by the defendant class, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, and for such other and further relief as to the Court may seem just and proper.

November 3, 1975

Yours, etc.



K. WADE EATON, ESQ.
Attorney for Plaintiff
Greater Up-State Law Project
80 West Main Street
Rochester, New York 14614
Tel. No. (716) 325-2520

TO: Hon. John K. Adams, Clerk
United States District Court
Western District of New York
United States Courthouse
Buffalo, New York 14202

Joseph A. Regan, Municipal Attorney
Attorney for Defendants
Saccone and Pietrantonio
46 City Hall
Rochester, New York 14614

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN,

Plaintiff,

-v-

PHILIP SACCONI, et al.,

Defendants.

Civil No. 74-549

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF MONROE)

K. WADE EATON, being duly sworn, deposes and says:

1. I am a member of the bar of this Court and I am employed as a staff attorney by the Greater UpState Law Project of the Monroe County Legal Assistance Corporation. I am the attorney representing the plaintiff herein and am thoroughly familiar with all the proceedings herein. I make this affidavit in support of plaintiff's motion for partial summary judgment and her motion for an order determining that this action may be maintained as a class action as authorized by Rule 23 of the Federal Rules of Civil Procedure.

NATURE OF THE CLAIM

2. The plaintiff is a private citizen who was the named defendant in a debt collection action commenced by the

American Finance Corporation in the City Court of the City of Rochester, New York, which action was based on a contract to repay a loan. The action was commenced by the service of a summons with endorsed complaint wherein the nature and substance of the plaintiff's cause of action was alleged to be "breach of contract for monies loaned". Upon plaintiff Sullivan's default in the City Court action a judgment was entered against her pursuant to Section 3215 of the New York Civil Practice Law and Rules in the amount of \$800.00, an amount greater than that permitted by Section 352(d)(1) of the New York Banking Law. The judgment was entered by defendant Pietrantonio in her official capacity as a clerk-typist of the Civil Branch of the City Court of Rochester and under the authority of the defendant Saccone who is the Chief Clerk of the Civil Branch of the City Court of Rochester. The judgment was entered, under the authority of Section 3215 of the New York Civil Practice Law and Rules, without any review by a judicial officer or judge of the plaintiff's papers or claim, either with regard to its legal sufficiency or to the power of the court to grant the relief requested.

3. Plaintiff seeks relief in the nature of a declaration that the default judgment procedures permitted by Section 3215 of the New York Civil Practice Law and Rules, and its sister statutes, providing for the entry of default judgments without a judicial review of the legal sufficiency of the

plaintiff's claim, violates the due process clause of the fourteenth amendment of the United States Constitution; a declaration that the actions of defendant Saccone and defendant Pietrantonio and the acts of all others similarly situated in entering default judgments pursuant to §3215(a) constitute a deprivation of the rights of the plaintiff and the class she seeks to represent as guaranteed by the due process clause of the fourteenth amendment to the United States Constitution in violation of 42 U.S.C. §1983; and an order permanently enjoining the members of the defendant class from acting pursuant to §3215(a) of the New York Civil Practice Law and Rules and its sister statutes. The complaint also seeks compensatory and punitive damages and other relief but that relief is not sought in this motion for partial summary judgment.

PARTIAL SUMMARY JUDGMENT

4. This motion for partial summary judgment is based upon various admissions of defendants Saccone and Pietrantonio as indicated in the Affidavit of Proof of Admissions of Facts sworn to by your deponent on the 4th day of March, 1975, relating to a Request for Admission of Facts dated January 28, 1975. It is also based on a Statement of Stipulated Facts dated June 19, 1975, executed by counsel for the plaintiff and for defendants Saccone and Pietrantonio, the only present parties to this action. The plaintiff has settled her individual claims against defendant American Finance Corporation and Barrett Hess and this action has been dismissed, with prejudice, as against those

defendants by Order of this Court dated March 3, 1975. This motion for partial summary judgment is further founded on the admissions that defendants Saccone and Pietrantoni in their answer to the complaint dated December 17, 1974.

5. There are no issues contested by the parties as to any material facts and this motion for partial summary judgment is based entirely on the stipulations and admissions referred to in the proceeding paragraph.

CLASS ACTION

6. There are four prerequisites to the maintenance of any action on behalf of a class under Rule 23(a). The rule provides that an action may be maintained as a class action if "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or facts common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." All of these prerequisites are met in this action, both with regard to the plaintiff class and with regard to the defendant class.

RULE 23(a) (1) - IMPRACTICABILITY OF JOINDER

7. The plaintiff class consists of all persons who

have had or who may in the future have default judgments taken against them pursuant to Section 3215 or its sister statutes without judicial review of whether the facts alleged constitute, as a matter of law, a claim upon which the relief sought may be granted. Although figures for Rochester, New York, are not available, the class includes residents of New York City where statistics taken from the 18th Annual Report of the Judicial Conference of the State of New York, 1973, Table 20, indicate that during a one(1) year period (July 1, 1971, to June 30, 1972) a total of 154,546 default judgments were entered in the Civil Court of the City of New York, a court of parallel jurisdiction with the Civil Branch of the City Court of Rochester. Further figures as to the magnitude and characteristics of default judgments taken in the City of New York appear in the report of the Default Judgment Study, October 1973, a copy of which has been filed with the Court as plaintiff's Exhibit 1. The issues raised in this action relate to the legitimacy of the process followed in entering each and every default judgment under Section 3215(a) of the Civil Practice Law and Rules and its sister sections in the New York Uniform City Court Act, the New York Uniform Justice Court Act, the New York Uniform District Court Act and the New York City Civil Court Act. The size of the class ranges into the hundreds of thousands and potentially millions of persons, thus making the

joinder of each entirely impracticable.

8. The defendant class consists of all court clerks and lesser court officials who are authorized by New York Civil Practice Law and Rules §3215, and its sister provisions, to enter default judgments in the courts of New York State. The class is comprised of court officials from 62 counties who act as clerks of the Supreme Court, the County Courts, various City and District Courts, the Clerk of the Civil Court of the City of New York and the Clerks of New York's numerous justice courts. It also includes court officials who are authorized to enter default judgments pursuant to the authority of the clerk of the court which they serve. Their number is also so numerous that to make a joinder of each impracticable.

RULE 23(a)(2) - COMMON ISSUES

9. The common issues applicable to all members of the plaintiff class and to all members of the defendant class are whether a statute which permits the entry of a money judgment against a defaulting plaintiff, without judicial review, violates the due process clause of the fourteenth amendment of the United States Constitution and whether the actions of the defendant class members taken pursuant to such a statute violate the rights of the plaintiff class members, in violation of 42 U.S.C. §1983. These questions are common to all members of both the plaintiff and the defendant classes. The facts

surrounding the claims of litigants in various New York state courts and their legal sufficiency, are not an issue in this action. Nor is there any factual dispute as to the procedures followed in various courts pursuant to §3215(a) of the Civil Practice Law and Rules and its sister provisions.

RULE 23(a)(3) - TYPICALITY

10. There is one central, constitutional issue raised by the plaintiff in this action. It does not relate to her relationship with the American Finance Corporation but does, instead, bear upon her relationship to the function performed by the defendant class as part of New York's judicial system. Plaintiff's claims are limited to a single procedural issue which is typical of the claims of each member of the plaintiff class, and as to which no member of the class has any adverse or contrary interest.

11. The claims to which the defendants must reply involve the constitutionality of state statutes applied uniformly by each member of the defendant class. Defendants Saccone and Pientrantoni are ably represented by the Corporation Counsel of the City of Rochester and the claims and defenses put forward in their behalf will be typical and representative of the claims and defenses which each member of the defendant class might raise as a party to this action.

RULE 23(a) (4) - ADEQUACY OF REPRESENTATION

12. The plaintiff seeks declaratory and injunctive relief which will flow directly to the benefit of all members of the class. She has no interests other than those which she shares with all members of the class. Plaintiff is represented by counsel with previous experience in class action litigation both in federal courts and New York state courts.

13. The defendant class is represented by the Corporation Counsel of the City of Rochester, which office possesses the experience, expertise and resources to adequately represent the interests of the defendant class.

RULE 23(b) (2)

14. If an action meets the prerequisites of Rule 23(a), it may be maintained as a class action if it further meets the requirements of one or more of the provisions of Rule 23(b). With regard to the plaintiff class, this action meets the requirements of Rule 23(b) (2), which provides for maintenance of a class action where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole".

15. With regard to the plaintiff class the members of the defendant class have participated in the entry of default judgments against members of the plaintiff class in an entirely uniform and consistent manner, pursuant to a uniform applica-

tion of New York Civil Practice Law and Rules §3215 and its sister provisions. Under these circumstances final declaratory and injunctive relief is entirely appropriate.

RULE 23(b) (1) (B)

16. With regard to the defendant class, this action meets the requirements of Rule 23(b) (1) (B), which provides for the maintenance of a class action where "the prosecution of separate actions by or against individual members of the class would create a risk of ... adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests." This section does not require that the moving party establish that the risk of separate actions is likely, but rather that the absent members of the class are at risk of having their interests effectively impaired or impeded should the suit proceed as an individual non-class action. In the present case the sole issue presented to this Court is the constitutionality of statewide statutes pursuant to which the defendant class members entered default judgment against the plaintiff class members. Should this action proceed as a non-class action there is a substantial probability that the challenged statutes will be declared unconstitutional

and that, as a practical matter, the authority of each member of the defendant class will have been substantially altered.

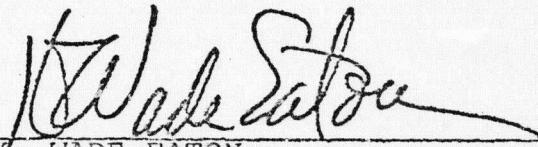
Rule 23(b) (1) (B) provides for a class action to be certified in cases such as this so that the responsibility and authority of public officials acting pursuant to state statutes may be litigated in a single action providing for notice to each member of the defendant class whose rights may be impaired or impeded pursuant to the final judgment entered in the pending action.

17. The present action concerns the constitutionality of a state statute and seeks permanent injunctive relief against a class of public officials and provides a clear example of the appropriateness of certifying a class pursuant to Rule 23(b) (1) (B).

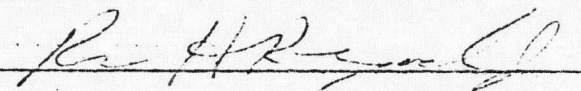
THREE-JUDGE COURT

18. Plaintiff raises a claim with regard to the constitutionality of certain provisions of New York's procedural statutes. These statutes are applied statewide and are enforced by State officials. The issues raised by the plaintiff in this action have not, to your deponent's knowledge, been the subject of litigation in either state or federal courts and raise a substantial constitutional issue requiring a convening of a statutory three-judge court to determine plaintiff's right to a declaration and a permanent injunction.

WHEREFORE your deponent prays that this Court enter an Order calling for an convening of a three-judge court and that this Court, sitting in three judges, grant plaintiff's motion for a partial summary judgment and for a certification of the plaintiff and defendant classes.


W. WADE EATON

Sworn to before me this
6th day of November, 1975.



GENE H. RETZSCH, JR.
NOTARY PUBLIC, State of New York
No. 3342715
Qualified in Monroe County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN,

Plaintiff

-v-

PHILIP SACCONI, et. al.,

Defendants.

ANSWERING
AFFIDAVIT

Civil No.
74-549

STATE OF NEW YORK }
COUNTY OF MONROE } SS:

Joseph A. Regan, being duly sworn, deposes and says:

1. I am an attorney-at-law and a member of the bar of this Court. I am a municipal attorney associated with the office of the Corporation Counsel of the City of Rochester. I represent the defendants Saccone and Pietrantonio in the above-entitled action, and am fully familiar with the facts and all prior proceedings.

2. Plaintiff seeks partial summary judgment against defendants in the form of a declaration that §3215(a) of the New York Civil Practice Law and Rules is unconstitutional and violates the rights of plaintiffs under the due process clause of the 14th Amendment, and further seeks an order enjoining defendants from further acting under the provisions of CPLR §3215(a) and sister statutes.

3. The only question before this Court is whether a three-judge court must be convened to hear further argument on the merits of this action, under the provisions of 28 U.S.C. §2281, since the action seeks to restrain the enforcement of a statute of the State of New York on grounds the statute is unconstitutional.

4. This court has the discretion to refuse to convene such a three-judge court where it appears that the constitutional questions raised are insubstantial.

5. The Supreme Court has held such questions to be insubstantial where prior decisions inescapably render the claims frivolous.

6. Recent Supreme Court holdings in D.H. Overmyer Co., Inc. v. Frich Company, 405 U.S. 174, 31 L.Ed. 2d, 124, 92 S.Ct. 775 (1972) and Swarb v. Lennox, 405 U.S. 191, 31 L.Ed. 2d 138, 92 S.Ct. 767 (1972) appear to make the constitutional issues presented in the instant case wholly insubstantial.

WHEREFORE, your deponent respectfully requests that an Order be entered denying plaintiff's request for convention of a three-judge court and dismissing the action of plaintiff.

s/ Joseph A. Regan
JOSEPH A. REGAN

Sworn to before me

this 20 day of November, 1975.

s/ Carol A. Carpenter
Comm. of Deeds (Exp. 3/8/76)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK }
COUNTY OF MONROE } SS:
CITY OF ROCHESTER }

Joseph A. Regan, being duly sworn, deposes and says that the attached Answering Affidavit was served upon plaintiff by my causing same to be mailed to K. Wade Eaton, Attorney for Plaintiff, at his office address, 80 West Main Street, Rochester, New York, 14614, on this 20th day of November, 1975.

3/ Joseph A. Regan
JOSEPH A. REGAN

Sworn to before me

this 20th day of November, 1975.

S/ Carol A. Carpenter
Comm. of Dec. 22 (Exp. 3/8/76)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, individually and on behalf
of all other similarly situated,

Plaintiff

- vs -

CIVIL 74-549

PHILIP SACCONI, individually and as Chief
Court Clerk of the City Court of Rochester
and LORRAINE PIETRANTONI, individually and
as Assistant Court Clerk of the City of
Rochester and both as representatives of
all others similarly situated; AMERICAN
FINANCE CORPORATION, and BARRETT HESS,

Defendants

K. Wade Eaton
80 West Main Street
Rochester, N.Y. 14614
Attorney for Plaintiff

Barrett Hess
535 Powers Building
Rochester, N.Y. 14614
Attorney for defendants American Finance
Corp. and Hess

Louis N. Kash
Corporation Counsel
46 City Hall
Rochester, N.Y. 14614
Attorney for defendants Saccone and Pietrantonio

By motion with supporting papers filed December 7,
1975 the plaintiff moved for an order calling for the
convening of a three judge court and for an order granting
partial summary judgment declaring Section 3215 of the

New York Civil Practice Law and Rules unconstitutional and permanently enjoining the enforcement thereof.

The motion is in all respects denied, in the exercise of discretion. The constitutional questions raised are insubstantial.

The action is dismissed.

SO ORDERED.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

March 1, 1976.

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, individually and on behalf
of all other similarly situated

CIVIL ACTION FILE NO. 74-549

vs.

JUDGMENT

PHILIP SACCONI, individually and as Chief
Court Clerk of the City of Rochester, et al.

This action came on for ~~trial~~ (hearing) before the Court, Honorable **Harold P. Burke**
, United States District Judge, presiding, and the issues having been duly ~~tried~~
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged **that this action is dismissed.**

Dated at **Buffalo, New York**
of **March**, 19 **76**.

, this **2nd** day**JOHN K. ADAMS**

Clerk of Court

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY SULLIVAN, individually and
on behalf of all others similarly
situated,

Plaintiff,

-against-

PHILIP SACCONI, individually and
as Chief Court Clerk of the City
Court of Rochester and LORRAINE
PIETRANTONI, individually and as
Assistant Court Clerk of the
City Court of Rochester and both
as representatives of all others
similarly situated,

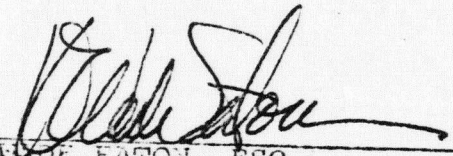
Defendants.

Civil No. 74-549

NOTICE OF APPEAL

Notice is hereby given that MARY SULLIVAN, plaintiff
herein, hereby appeals to the United States Court of Appeals
for the Second Circuit from the Order of the Honorable Harold
P. Burke, dated the 1st day of March, 1976, and the judgment
entered thereon the 2nd day of March, 1976.

Dated. March 9, 1976

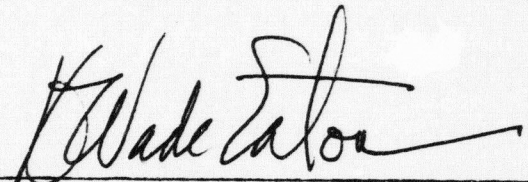

K. WADE EATON, ESQ.
GREATER UPSTATE LAW PROJECT
MONROE COUNTY LEGAL ASSISTANCE
CORPORATION
80 West Main Street
Rochester, New York 14614
Tel: (716) 454-6500
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of April,
1976, I served the foregoing Appendix

upon counsel for the appellees, by causing copies to be mailed,

postage prepaid, to: Joseph A. Regan, Esq.
Municipal Attorney
46 City Hall
Rochester, New York 14614


K. WADE EATON

Dated: April 1, 1976